

NTSB Order No. EA-5152

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 7th day of April, 2005

Respondent.

Docket SE-17309

The respondent has appealed from the March 2, 2005, oral initial decision and order of Administrative Law Judge William A. Pope, II,<sup>1</sup> which affirmed the Administrator's emergency revocation of respondent's airline transport pilot and medical certificates. The Administrator's emergency order alleged a violation of 14 *Code of Federal Regulations* § 67.403(a)(3).<sup>2</sup> As

<sup>2</sup> Section 67.403(a)(3) states no person may make or cause to

further discussed below, we deny respondent's appeal and affirm the law judge's decision.

### Background

The February 8, 2005, emergency order of revocation, as amended, alleged, in part, the following facts and circumstances:

1. [Specification of respondent's certificate number.]
2. On or about August 9, 2004, you applied for the issuance of an FAA first-class medical certificate from Dr. Ramon Velez Arce.
3. At the time of your application Dr. Velez Arce did not issue to you the FAA first-class medical certificate.
4. At the time of your application Dr. Velez Arce deferred to the FAA Civil [Aeromedical] Institute (CAMI) for the issuance of a medical certificate.
5. In August 2004, you presented an FAA first-class medical certificate to officers in the Puerto Rico Police Department.
6. [Allegation deleted by the Administrator at the hearing.]
7. The FAA first-class medical certificate that you presented was a reproduction.
8. You made or caused to be made the reproduction of an FAA first-class medical certificate as described in paragraph 7, above, for fraudulent purposes, to wit, to induce Police Inspector Ramos and Captain Diaz to believe that the certificate you presented was valid and current.
9. In a letter dated October 10, 2004, the FAA issued to you an Authorization for Special Issuance of a Medical Certificate (Authorization) AAM-313 second-class medical certificate.

Respondent is employed as a helicopter pilot for the San

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be made a reproduction, for fraudulent purposes, of any medical certificate.

Juan, Puerto Rico Police Department. His second-class medical certificate expired on March 31, 2004. On the day it expired, he applied for a new second-class certificate, but because he did not supply the aviation medical examiner (AME) with the additional medical information required to process his application, it was never processed. Respondent initiated another application on August 9, 2004, this time applying for a first-class medical certificate. The AME testified that he did not issue a certificate to respondent on either occasion, but instead deferred the August 9, 2004, application to the FAA's CAMI in Oklahoma City because respondent was not eligible for an unrestricted certificate; rather, he required a special issuance certificate, which must be approved by FAA medical staff at its CAMI.<sup>3</sup>

It should be noted that attached to every application form is a detachable certificate (approximately 3.5 inches wide and 5.5 inches high) that an AME can issue to an applicant who meets the requirements for unrestricted medical certification. However, in the case of applicants who are eligible only for a special issuance certificate, such as respondent, this detachable certificate - even though signed by the AME - is to remain

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<sup>3</sup> In 1998 respondent experienced what his FAA medical records refer to as a myocardial infarction, or heart attack. Since that time, his aviation medical examiner has routinely forwarded respondent's applications, along with the results of periodically-required cardiac tests, to CAMI for further evaluation. After evaluation of these required tests and information, CAMI has consistently issued respondent a special issuance certificate.

attached to the application form when it is forwarded to the CAMI for FAA review. The AME testified that, because respondent indicated he was in a hurry to have the certificate issued, he had entrusted the August 9, 2004, application package and accompanying medical records to respondent in a sealed envelope for expedited mailing to the FAA.

Respondent does not deny that after the AME entrusted the application package to him he made photocopies of the front and back of the completed and signed - but unissued - medical certificate that was attached to his application.<sup>4</sup> Nor does he dispute that he then glued together the copies of the front and back of the unissued certificate and cut it to the approximate size of an actual medical certificate, thereby constructing a document that resembled an original medical certificate.

Respondent acknowledged that he presented the constructed document to several employees of the San Juan Police Department, including at least one of his superior officers, and that he offered a copy of this constructed document for inclusion in his official file. Inspector Miguel DeJesus Rivera, director of the helicopter interdiction unit and one of respondent's supervisors, testified that some time after respondent's medical certificate had expired, while he and another officer were looking for a copy of respondent's medical certificate, respondent handed him the

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<sup>4</sup> He did, however, deny that the AME gave him the documents in a sealed envelope. Rather, he asserted at the hearing that they were given to him in a folder. The law judge credited the AME's testimony on this point.

reproduced medical certificate and said, "this is the document, do you need a copy?" <sup>5</sup>

Respondent, who appeared pro se, categorically denied having committed any fraudulent act, and asserted that he never flew or asked to be allowed to fly during the period of time his medical certificate was expired (March 31, 2004, through October 10, 2004). However, respondent did not testify. Accordingly, there is no direct evidence of respondent's motivation for presenting this constructed document to the San Juan Police Department. Counsel for the Administrator pointed out that respondent was not eligible to fly after his previous medical certificate expired, and he was therefore in danger of losing his flight pay. Accordingly, the Administrator suggested that respondent had a financial motive for attempting to persuade his employer that he held a valid medical certificate.<sup>6</sup>

The law judge concluded that respondent had the means and the opportunity to fabricate the document here at issue, and that respondent knew it was not a medical certificate that had been

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<sup>5</sup> Captain Diaz, the training director, testified that whenever a pilot's medical certificate expired, he would notify his supervisor, Inspector DeJesus, and Inspector DeJesus would then notify the pilot and request that he bring in a new medical certificate.

<sup>6</sup> Captain Diaz testified that flight pay could be stopped 30 days after a medical certificate expired. There is no evidence in the record of whether or when respondent's flight pay was stopped. However, respondent stated in his closing argument to the law judge that he received a letter on September 1, 2004, notifying him that he would no longer receive flight pay, thus suggesting that at the time he presented the copy of his medical certificate to his superiors (in August 2004), his flight pay had not yet been terminated.

issued to him. He further found that when respondent showed it to his supervisor and asked if he needed a copy, he said nothing about it being a copy of an unissued certificate, and further noted that respondent allowed it to be copied and put into his official file without saying anything about the fact that it was not a validly-issued certificate. The law judge concluded that, despite the lack of any direct evidence of respondent's intentions, "the logical inference is that he went to the extreme trouble of preparing it to look like an actual certificate for the purpose of deception." (Transcript (Tr.) 314.) He found that the Administrator had shown by a preponderance of the evidence that respondent created the document for the fraudulent purpose of showing that he had a valid medical certificate, and he upheld the emergency order of revocation.

### Discussion

On appeal, respondent raises several issues: (1) he points out what he believes are discrepancies in the Administrator's evidence at the hearing, and attempts to supplement the record with additional information; (2) he argues that the law judge should have permitted Inspector Marcos Ramos to testify, and asserts that Ramos would have contradicted the testimony of the Administrator's witnesses; and (3) he asserts that he was unable to adequately represent himself at the hearing without an attorney. We have evaluated each of respondent's arguments, and find none of them persuasive.

The alleged evidentiary discrepancies respondent mentions relate to issues of little or no significance, and do not detract from the weight of the Administrator's evidence. Further, the supporting documents respondent seeks to introduce into the record at this stage were not produced at the hearing, nor has respondent shown good cause why any of this new evidence should be admitted now. As the Administrator points out in her reply brief, respondent did not comply with the law judge's pretrial order by listing any proposed witnesses or exhibits. Accordingly, we could properly exclude such evidence because respondent has not justified its admission at this stage of the proceeding. But even assuming this new evidence were properly before us, we would find no grounds for disturbing the law judge's decision.<sup>7</sup>

We turn next to respondent's contention that Inspector Ramos should have been allowed to testify that respondent told him the certificate he presented was only a photocopy and that respondent never said it was a valid or genuine certificate. While Inspector Ramos might have provided relevant testimony (as he was

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<sup>7</sup> The documents attached to respondent's appeal brief include: (1) a letter signed by Captain Diaz stating that Diaz requested to see respondent's medical certificate; (2) another letter signed by Captain Diaz requesting an official investigation by the Police Department into possible falsification of respondent's second-class medical certificate; and (3) a statement signed by Captain Matias Ojeda stating that when he and respondent visited respondent's AME, the AME told them that he advises pilots to make copies of medical records in case they get lost in the mail. The contents of a fourth document, a statement signed by Inspector Ramos indicating that respondent told him the certificate was only a photocopy, is discussed later in this decision.

apparently the only other person present when respondent presented his certificate to Inspector DeJesus), we defer to the law judge's decision not to allow respondent to present witnesses at the hearing in light of his failure to comply with the pretrial discovery order. Under our rules of practice, our law judges are authorized to regulate the conduct of the hearing; and they have broad powers in this respect, including the power to rule on objections to evidence and offers of proof.<sup>8</sup> See Administrator v. Scott, NTSB Order No. EA-4572 at 2 (1997) (it is well within the law judge's discretion to decline to permit a respondent to adduce at the hearing evidence that he inexplicably failed to produce in discovery).

Thus, the exclusion of Inspector Ramos's testimony was within the discretion of the law judge. Further, we are satisfied that, even if Captain Ramos had testified as respondent contends he would have, the record would contain sufficient evidence to sustain the charge. This is because Inspector Ramos's proposed testimony would not have negated the testimony of Inspector DeJesus and Officer Cabrera, both of whom testified that respondent gave them the constructed document for copying and inclusion in his official file without mentioning it was anything other than an original validly-issued certificate. Nor would it have negated the strong circumstantial inference that the law judge drew from the fact that the copied document was fabricated in such a way that it was intended to look like a

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<sup>8</sup> 49 C.F.R. 821.35(b).



validly-issued certificate.

In order to prove a violation of section 67.20(a)(3), the Administrator need only show that the respondent intended for the copy to deceive someone; there is no need to show that the copy actually deceived someone. See Administrator v. Coomber, NTSB Order No. EA-4283 (1994) (Administrator not obligated to prove action taken in reliance to establish a violation of section 67.20(a)(3); proof of intent to deceive is sufficient to show a fraudulent purpose under that section).<sup>9</sup>

Given the close, obviously intentional resemblance of the copy here at issue to an actual certificate, and the lack of any explanation for why respondent strove to create such a close resemblance rather than simply submitting a photocopy on standard-size paper - which would have been sufficient if his purpose was simply to show that he had applied for a certificate<sup>10</sup> - we think that the circumstances here created at least a rebuttable presumption that he made the reproduction for a fraudulent purpose.<sup>11</sup> Respondent presented no evidence to

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<sup>9</sup> Thus, it is of no import to this case that several of the police officers who handled the certificate recognized it immediately as a fabrication and not an original. We note, however, that the officer who was charged with copying the certificate for respondent's file testified that he believed it was an actual medical certificate.

<sup>10</sup> We note that this is exactly what respondent apparently did in March 2004 with his earlier application (which was never processed because he did not supply the required cardiac tests in a timely manner). Respondent provided the police department with a full-size copy of the application to show that he had applied for a renewed certificate. (Exhibit A-6; Tr. 197.)

<sup>11</sup> Cf. Administrator v. Caufield, 5 NTSB 121 (1985) (despite the fact that there are legitimate reasons for making copies of

rebut this presumption and has offered no other explanation for his actions.

Finally, respondent argues that he was unable to adequately represent himself when his attorney failed to appear at the hearing. It is not entirely clear from the record whether respondent actually retained an attorney or if he only thought he did, and he offers no explanation in his appeal brief for the confusion at the hearing when no attorney appeared to represent him.<sup>12</sup> However, assuming that respondent properly retained an attorney to represent him at the hearing, respondent's recourse would be against the attorney, as the law judge explained to him at the hearing, and not in this forum. See Administrator v. Richard, et. al., 5 NTSB 2198, 2201 (1987) (decision by respondents' counsel to leave during the evidentiary portion of the hearing is a matter between him and his clients and whatever problems respondents had in representing themselves at the hearing are not attributable to any reversible error by the law judge).

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airman certificates, respondent's showing of a copy of his revoked medical certificate to the medical examiner in order to satisfy his concerns about whether the underlying prior revocation had been resolved, raised at least a rebuttable presumption that the reproduction was made in contemplation of the fraudulent purpose).

<sup>12</sup> No attorney entered an appearance for respondent in the case, and the law judge was not aware until the hearing that respondent believed he had an attorney. Counsel for the Administrator objected to a continuance, citing the expense that the FAA had gone to in preparing for and transporting witnesses to the scheduled hearing. However, the law judge delayed the beginning of the hearing for one day in order to accommodate respondent's attempts to procure the attendance of his counsel.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The Administrator's emergency order of revocation and the law judge's initial decision are affirmed.

ROSENKER, Acting Chairman, and CARMODY, ENGLEMAN CONNERS, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.